

**BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD**

In the Matter of the Impasse between

GARY COMMUNITY SCHOOL CORPORATION

and

THE GARY TEACHERS UNION, LOCAL NO. 4, AFT, AFL-CIO

Case Number: F-02-01-4690

Fact-Finder: Michael V. Riley

BACKGROUND

On January 6, 2003, the Indiana Education Employment Relations Board (IEERB) appointed the undersigned, Michael V. Riley, as the fact-finder in the impasse between the Gary Community School Corporation and the Gary Teachers Union, Local No. 4, AFT, AFL-CIO (hereinafter referred to respectively as the Corporation and the Union).

The Corporation is located in Lake County, has an approximate student population of 17,750 and employs a full-time teaching staff of approximately 1,298 (according to the 3/4/03 scattergram provided by the Corporation). The Corporation is located in an urban setting with six (6) high schools, seven (7) middle schools and twenty-two (22) elementary schools. The residents of the geographic region in which the school district is located have suffered continued economic hardships as the result of financial distress in the steel industry, a major employer in Lake County.

The first bargaining session for the 2002-03 contract year was held on July 22, 2002 and the final session (before impasse was declared) occurred on December 23, 2002,

The parties have followed a “hybrid” form of interest based bargaining for the past few years. The parties were not able to reach an agreement on a new contract before the expiration of the 2000-2001 contract. Therefore, they entered into mediation on January 15, 2002. After five mediation sessions were held without a settlement being reached, the Union requested fact-finding and a hearing was held on April 30, 2002. After the fact-finding report was issued in May of 2002, the parties reached a settlement on June 3, 2002. That settlement incorporated several of the recommendations contained in the fact-finding report.

Approximately two weeks prior to the holding of a fact-finding hearing, a meeting was held with the fact-finder, the President of the Union and Counsel for the Corporation in order to refine those issues which have been an impediment to contract settlement. That meeting was both cordial and informative but did not result in a resolution of the current impasse. The information presented by the parties at the hearing was consistent with the information given at the pre-hearing meeting.

The fact-finding hearing was conducted on March 6, 2003 at the Gary Career Center in Gary. The Union was represented by Mrs. Sandra Irons, the President of Local No. 4 and the Corporation was represented by attorney, Gilbert King, Jr. Both Mrs. Irons and Mr. King were accompanied by other individuals who gave information regarding various aspects of each team’s presentation. An audience of approximately 100 individuals was present and all audience members were given the opportunity to present written comments to the fact-finder. The hearing began at 4:20 p.m. and ended at approximately 6:45 p.m.

SUMMARY OF ARGUMENTS MADE BY THE PARTIES

Direct presentation by the Corporation:

The Corporation team gave the initial presentation and indicated, in effect, that there were 6 issues in dispute:

- Medical and Dental Insurance Premium Contribution
- Requiring certified staff members with classroom assignments to present lesson plans to their building administrator for review
- Requiring the submission of Student Progress Reports.
- Salary increase
- Eliminating Funeral Leave time for the death of a friend
- Decreasing the number of allowed sick days for a certified staff member before a doctor's excuse is required from 5 to 3

The Corporation stated that the fact-finding report issued by IEERB in 2002 recommended a graduated increase in Medical and Dental insurance cost sharing between the Corporation and Certified Staff Members beginning with a 4% contribution for the 2001-2002 contract year and ending with a 7% increase for the contract year beginning January 1, 2005. That report also recommended that "...any insurance premium refunds due teachers in future years be used to offset any increase in insurance premium costs to teachers. These refunds would not be used to lower current premium amounts being paid by teachers but would be used to help offset premium increases teachers may experience." (See final page of Fact-Finding report in Case Number F-01-05-4690). The Corporation further stated that while there appears to be an understanding that cost sharing between the Corporation and Certified Staff Members is appropriate, the Union disagrees with the Corporation's interpretation of the portion of the 2002 Fact-Finding report regarding the application of any insurance premium refunds (emphasis mine) due to teachers. Specifically, the Corporation used a premium refund of approximately \$600,000 to offset the previous year's negative claims history of \$529,328.97. The result was that (according to the Corporation) a net refund of \$75,470.86 was available and, of that amount, \$48,059.33 was to be given to the teachers.

The Corporation then presented information in support of its position that weekly lesson plans would be presented to the building administrator by all classroom teachers in a building. This portion of the presentation was directed toward the concept of emulating the strategies employed by school districts which experienced strong levels of student

academic performance. It was argued that high quality instruction is based on quality planning and that quality planning is a joint effort between a classroom teacher and his/her building administrator. The Corporation believes the current contract language permitting up to 4 lesson plan reviews per instructional year is too low a standard and that it should be upgraded to a weekly review.

The next topic covered related to the issuance of Progress Report for students. The proposed language would require all classroom teachers to issue one progress reports for his/her students mid-way in each marking period. The Corporation believes this practice will result in greater parent involvement in the schools and that there is a correlation between student academic success and parent involvement. Several educational sources were cited in support of this position.

The Corporation then presented information regarding its ability to provide a salary increase for certified staff members, including an increase in “Flat Rate Pay” (essentially, pay for extra-curricular assignments and similar duties). It was explained that the 2003 Corporation budget was severely cut to meet increases in insurance, utilities and other necessary services for the district. In addition, the use of district funds for Charter Schools also has a negative impact on the Corporation’s finances. The Corporation’s position is that the current budget will only allow for a 2% salary increase for certified staff members.

The subject of modification of the existing Funeral Leave language was addressed in terms of the economic impact this leave has on the Corporation’s budget. The Corporation alleged that hours used in the 2001-2002 school year totaled 3,061 and that, using a beginning BS salary level, this translates to a loss of \$105,000 each year in services to the Corporation. In addition, the Corporation believes that time spent away from students has a negative impact on student test scores.

The last portion of the Corporation’s presentation covered the topic of requiring a teacher to obtain a doctor’s certificate for illness which result in an absence of 3 school days or greater. The Corporation presented district-wide statistical information showing that 3 day illness absences cost the Corporation approximately \$66,000 per year, 4 day illness absences cost the Corporation approximately \$28,000 per year and 5 day illness

absences cost the Corporation approximately \$23,000 per year. The crux of the Corporation's argument is that most of the illness absences (which are in excess of one day) tend to be in the 3 day category. The Corporation noted that there is a dramatic "drop-off" in the number of 4 day illness absences and a continued "drop-off" in the number of 5 day illness absences. Therefore, the Corporation argues that many teachers are abusing the use of sick days by taking 3 days off for many illness absences, when they could have returned to school in 1 or 2 days. By requiring a doctor's excuse for 3 day or greater illness absences, the Corporation believes it will reduce what it considers to be an abuse of sick days.

Rebuttal by Union of Corporation position:

Under the agreed protocol for the hearing, the Union gave a rebuttal to the position presented by the Corporation.

- **Lesson Plans:** The Union believes that the Corporation's proposed language regarding lesson plan submission would add an undue burden on teachers whose time commitment to their duties requires them to sacrifice weekends and evenings to simply "keep up" with their responsibilities. In addition, teachers need to have the flexibility to modify lesson plans on a rapid basis to accommodate changes in student progress through various subjects and to take advantage of changes in current events.
- **Illness leave:** The Union opposes the Corporation's proposal on modifications to the funeral leave language of the contract on several bases. First, the Corporation has provided this benefit since 1963 and has not, in the past, indicated that it has been abused by teachers. Second, the Union believes that the removal of this long-standing benefit is an indication of the Corporation's desire to "punish" certified staff members. Third, the Union argued that teachers must work in a high-stress environment and in close quarters with students, which tends to lead to periodic illness. Many of these illnesses are gone within a short period (i.e.-3 to 5 days)

and teachers promptly return to their duties. Fourth, it was also argued that it can be costly and, in some circumstances, nearly impossible to get an appointment with a physician in a short period of time.

- **Funeral leave:** The Union's opposition to modification of the funeral leave for friends language in the contract is based on the belief that the death of a close friend and/or colleague can be very difficult for a teacher. The Union also argued that many administrators routinely attend funerals for colleagues and have no restrictions on the amount of time that can be spent on those situations.
- **Progress reports:** The requirement that progress reports be issued for all students and be reviewed by building administrators is opposed by the Union on at least two grounds. First, the Union believes this could add a significant time requirement for already overburdened teachers. Second, the Union argued that the Corporation spent more than \$1,000,000 to purchase the "Target Teach" program but that the simplified progress report portion of this program has never been implemented.

Direct Presentation by the Union:

In its direct presentation, the Union covered two of the issues argued by the Corporation along with one additional matter. First, the Union stated that the total salary for certified staff as a percentage of the most recent budget was 42.89% which is a reduction from a figure of 47.8% several years ago. The Union also claimed that the Corporation spent \$1.2 million less than originally budgeted for the 2001-2002 school year, leaving a large year end balance. The Union then gave a history of salary increases for past years as follows:

1994	3 %
1995	3 %
1996	1.5 %
1997	2.5 %
1998	3.0 %

1999	1.0% + 3 % ISTRF
2000	2.7%
2001	3.1%
2002	2.4%

The Union argued that the reduction in spending from projected budget along with other available sources of funds, including state new monies would be sufficient to fund a 5% raise for certified staff members.

Next, the Union used an overhead which showed its analysis of health insurance premium overpayments by teachers. The Union argued that, over a period of several years, the Corporation failed to give refund premium overpayments back to teachers.

Finally, the Union gave information in support of its proposal that the ratio of students to counselors and social workers be reduced in a manner which would not create any additional cost to the Corporation. The Union indicated that a joint Corporation-Union committee had given a report which outlined a recommendation for minimum allocation of counselors to students but that the Corporation had rejected the recommendation. With regard to social workers, the Union argued that social workers must deal with students from families facing severe economic and social problems. The Union believes that the time consuming challenges of working with these situations does not leave sufficient time for the social workers to attend to other necessary responsibilities. By reducing the student to social worker ratios, more time will be available to assist students in need of their services.

Rebuttal by Corporation of Union position:

In its rebuttal, the Corporation addressed four issues:

- **Lesson plans and progress reports:** The Corporation presented statistical data showing that students in the Gary Community Schools do not score well in ISTEP tests and that the use of lesson plans and progress reports are integral components of a program to improve test scores. The Corporation used the analogy that a

teacher's lesson plans help student reach their goals in the same way that a flight plan is necessary for a pilot to reach his or her destination. With regard to progress reports, the Corporation argued that it would be improper for a physician to say that he or she was too busy to help his or her patient in an intensive care setting and that teachers need to take the time to communicate with parents when students are not meeting educational standards.

- **Health insurance refund allocation:** The Corporation argued that, in its determination of what constituted a refund of insurance premiums paid, it fully abided by the fact-finder's recommendation in 2002. The bulk of the refunded premiums was applied to teacher retirement fund contributions.
- **Salary increase:** The Corporation indicated that the original budget was modified because of changes in the state's allocation of new monies. The Corporation was over-budget by more than \$1,000,000 which reduced its cash balance. It was stated that if the Union could help the Corporation reduce the budget by another \$2,100,000, the Corporation would be able to fund a 5% salary increase for certified staff members. It was also stated that several school buildings are badly in need of repair, that the Corporation has closed 4 schools in recent years and that it is important to find funding for the building of new facilities. All of these economic pressures make it impossible to meet the Union's salary demands. The Corporation reiterated its position that a 2% increase on the salary schedule and flat rate pay is reasonable.

DISCUSSION

In addition to the oral presentations given at the fact-finding hearing, the Corporation supplied the fact-finder with more than 400 pages of supportive material and the Union supplied approximately 175 pages. The fact-finder digested that material and also reviewed the Hearing Examiner's Report issued in IEERB Case No. U-00-03-2315 (*Goshen Education Association, et al. and Board of School Trustees of the Goshen Community*

Schools). The facts of the Goshen unfair practice case involved the application of insurance premium refunds by the school district and the fact-finder's review was to determine if that decision had any bearing on the arguments presented in the fact-finding hearing. While the facts of the Goshen case appear to be sufficiently different from the facts involved in the Gary Teachers Union argument regarding insurance premium refunds, the Corporation and the Union may want to review that decision and make their own determination as to its relevance. With regard to the fact-finding report recommendation in 2002 that the Corporation make a 95% contribution to medical and dental premium cost, the recommendation is sound and should be implemented.

While the fact-finder fully understood the basis for the Corporation's arguments in support of eliminating funeral leave provisions relating to a teacher's friends and the requirement that a doctor's certificate be obtained for illness absences in excess of three days, I am not convinced that they are necessary components of a reasonable settlement of the current impasse. While it is important that the Corporation be alert to finding ways to improve the amount of instructional time available for students and reduce expenses, I am not convinced that the proposed elimination of the funeral leave provisions for a friend will have a significant impact in either of those areas. I agree with the Union's position that requiring a doctor's certificate for illness absences of 3 days or more will work an undue hardship on teachers. The inability to secure an appointment with a physician within a reasonably short period of time and the expense associated with obtaining the certificate, in the fact-finder's opinion, make it unreasonable to reduce the current time limit of 5 days to 3 days.

The Corporation's proposal requiring teachers to submit weekly lesson plans to building administrators, in the fact-finder's opinion, appears to be the wrong way to reach the right result. I fully agree that the creation and use of well thought-out, well researched, and properly applied lesson plans will have a positive effect on student academic performance. However, simply requiring teachers to submit plans for weekly review does not speak to the more important issue of providing resources to assist teachers in understanding what constitutes appropriate lesson plans. Many districts, both in Indiana

and in other states have devoted significant time and money to develop programs designed to support teachers in the creation and application of lesson plans. I suggest that the Corporation consider using its resource to assist teachers in this area instead of advocating the weekly administrator review of lesson plans approach.

Based on the statistical information given to me by the Union and the Corporation, it is clear that a significant number of students in the school district face socio-economic challenges that have a severe negative impact on their potential for academic success. I agree that the appropriate use of progress reports is an important tool in helping students to strive academically. I am unclear as to why the Corporation and the Union have not been able to work together in fully utilizing that portion of the TargetTeach program which is designed to streamline the creation of progress reports. Possibly the program has problems which prevent implementing this function or possibly certified staff members and administrators have not had the time to fully understand whether or not it can be applied in the school district. In any event, the use of some type of simplified progress reporting system in the Gary schools would seem to have a positive impact on academic achievement for students.

My analysis of the financial data supplied by the Corporation clearly indicates its continuing economic battle to balance important and necessary expenditures against reduced available funds. The continued national economic woes would seem to indicate that the Corporation is not likely to receive any economic “good news” for several years. One of the presenters for the Corporation stated, at the hearing, that a 5% salary increase could be offered if significant cuts were made to the budget. In the fact-finder’s opinion, the damage those cuts would make to the educational program would greatly outweigh any short-term economic benefit to teachers. Instead, the better approach, in the fact-finder’s opinion, is to settle on a lower, but still comparable (to other districts and state averages) salary increase. It was suggested that any salary increase for the Gary Schools should be on a par with those given in Indiana cities of similar size such as South Bend, Ft. Wayne and Evansville. Each of those cities has a different type of economic base, tax base and employment history. Therefore, I cannot agree with the suggestion that Gary’s increase

“line-up” with increases in the cities mentioned. Instead, a more appropriate measure would be based on state averages and Gary’s own past history of salary increases. Any salary increase will require the Corporation to make important budgetary reductions. The Corporation has indicated that it is able to give a 2% salary increase. In the fact-finder’s opinion, the Corporation appears to have the ability to make additional budgetary reductions in order to give a salary increase of at least 2.5%.

SPECIFIC FINDINGS AND RECOMMENDATIONS

Based on the oral and written information presented to me, I make the following recommendations:

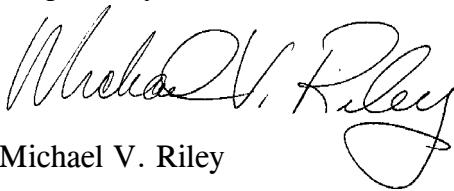
- The proposal for elimination of funeral leave time for a friend should not be implemented.
- The proposal for requiring a doctor’s certificate for illness absences of 3 days or more should not be implemented.
- The Corporation’s initial proposal requiring the submission of weekly lesson plans to the building administrator should not be implemented. Instead, the terms of the Corporation’s “last, best offer” submitted to the Union on December 23, 2002, should be modified to read as follows: “A joint committee of administrative and union representatives shall be established for the purpose of implementing procedures designed to coach and support teachers in the process of developing effective lesson plans.”
- The Corporation’s initial proposal requiring the submission of progress reports should be not be implemented. Instead, the terms of the Corporation’s “last, best offer” submitted to the Union on December 23, 2002, should be modified to read as follows: “A joint committee of administrative and union representatives shall

be established for the purpose of implementing procedures designed to implement the simplified progress report component of the TargetTeach program.”

- I cannot offer any meaningful solution for settling the disagreement over the insurance refund recommendation in the 2002 fact-finding report. As suggested earlier in this report, the parties may wish to review the IEERB decision in the Goshen School Corporation Unfair Practice Complaint and attempt to reach a compromise on this issue.
- The Corporation should give all certified staff members a 2.5% salary increase and should also use that same percentage increase for flat rate pay.
- The recommendation in the 2002 fact-finding report regarding increased percentages of teacher contributions to medical and dental insurance premiums should be implemented.
- While no information was presented by the parties as to the term of any contract finally agreed to, it would appear that only one year contracts have typically been used in recent years. However, I encourage the parties to give serious consideration to implementing a multi-year agreement.

Dated this 24th day of March, 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael V. Riley". The signature is fluid and cursive, with the first name "Michael" and last name "Riley" clearly distinguishable.

Michael V. Riley

Hearing Officer